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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 72-574

LEE T. SELLARS, *Petitioner*,

v.

COMMITTEE ON ADMISSIONS OF THE DISTRICT OF COLUMBIA COURT OF APPEALS, *Respondent*.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

C. FRANCIS MURPHY,
Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

Attorneys for Respondent,
District Building,
Washington, D. C. 20004
Telephone: 629-3916

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BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

Whether a rule of the Committee on Admissions of the District of Columbia Court of Appeals requiring that an applicant for admission to the bar be a graduate of a law school approved by the American Bar Association unconstitutionally curtails vested rights when applied to petitioner,

who, 37 years prior to promulgation of the rule, graduated from a law school not approved by the American Bar Association.

STATEMENT

Petitioner seeks review of the order of the District of Columbia Court of Appeals, in banc, upholding respondent's rejection of his application to take the District of Columbia bar examination because of his failure to have graduated from an approved law school, i.e., one approved by the American Bar Association (Petitioner's App. A).

Petitioner graduated from the Duquesne University School of Law in 1935. Duquesne's Law School was not then approved by the American Bar Association and did not become so approved until 1960 (Petitioner's App. H). In the summer of 1935, petitioner took and failed the Pennsylvania bar examination. He thereafter embarked on a career as a radio commentator, lecturer, writer, and editor, which he has since been compelled to abandon because of a physical disability injuriously affecting his speech. (Petitioner's App. B-2.)

In 1971 petitioner made application to take the District of Columbia bar examination scheduled for June of that year. At the time of his application, admission to the local practice of law was under the aegis of the Committee on Admissions and Grievances of the United States District Court for the District of Columbia rather than that of respondent. In spite of the circumstance that the law school attended by petitioner lacked approved status at the time of his graduation, the District Court Committee permitted him to sit for the District of Columbia bar examination because he would have been eligible to take such examination at the time of his graduation from Duquesne (Petitioner's App. G). In this regard, Rule 93(e) of the

Rules of the United States District Court for the District of Columbia, then in effect, provided in pertinent part that:

> "• • • In any instance in which reference herein is made to an 'approved law school', the Court or the Committee in its discretion may waive the requirements for work or study in any approved law school if the rules of this Court in effect at the time of the work or study by the applicant in law school did not provide for approval of law schools."

Petitioner failed the bar examination administered in June 1971 and subsequently failed the examination administered in January 1972. (Respondent's App. A, *infra.*) Thereafter, respondent replaced the District Court Committee as the local admissions committee. Such replacement became effective on April 1, 1972, by virtue of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (hereinafter "the Court Reform Act"), P. L. 91-358, 84 Stat. 473, 597. The Court Reform Act authorized the District of Columbia Court of Appeals [1] to promulgate rules concerning, *inter alia,* the examination, qualification, and admission of persons to membership in its bar. 84 Stat. 521. Acting pursuant to that statutory authorization, the District of Columbia Court of Appeals established respondent as the new Committee on Admissions to the District of Columbia Bar and approved certain rules adopted by respondent, including Rule 3, which recites that:

> "An applicant who has been graduated from a law school currently approved by the American

[1] The overriding purpose of the Court Reform Act was to put the District's judicial system on a par with those of states and, under its terms, the District of Columbia Court of Appeals became "the highest court of the District of Columbia." 84 Stat. 475; *M. A. P.* v. *Ryan,* 285 A. 2d 310 (D. C. App., 1971); *United States* v. *Thompson,* 452 F. 2d 1333, 1342 (D. C. Cir., 1971).

> Bar Association or who shall be eligible to be graduated from an approved law school within 60 days of the date of the examination will be permitted to take the bar examination. However, under no circumstances shall an applicant be admitted to the bar without having first submitted to the Secretary of the Committee a certificate verifying that he has graduated from an approved law school."

It was on the basis of Rule 3 that respondent rejected petitioner's application to take the District of Columbia bar examination (Petitioner's App. D). Petitioner sought review of respondent's adverse ruling through a petition for review filed in the District of Columbia Court of Appeals. He asserted, in effect, that unless Rule 3 was construed to contain an exception like that embodied in former District Court Rule 93(e), set forth above, its application to him "would have the effect of a retroactive law" and "would violate due process by depriving * * * [him] of a vested right" (Petitioner's App. B-1). On July 11, 1972, that court denied the petition for review and on October 10, 1972, petitioner filed in this Court a petition for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Petitioner advances no ground for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. And see *Fields* v. *United States*, 205 U. S. 292, 296 (1907). The instant case involves nothing more than a District of Columbia rule of court whereby one seeking admission to the practice of law be a graduate of a law school approved by the American Bar Association,

and the application of that rule to one whose law school was not so approved until approximately 25 years following his graduation therefrom. The decision of the District of Columbia Court of Appeals upholding such a rule conflicts with no decision of this Court, a circuit court of appeals, or the highest court of any state. And when the case is considered in light of principles articulated by this Court, it will become readily apparent that petitioner has failed to present a question of gravity or general national importance sufficient to justify the issuance of the extraordinary writ he seeks.

Traditionally, matters concerning admission to the bar have been left to regulation by the highest court of a state. See *Schware* v. *Board of Bar Examiners*, 353 U. S. 232 (1957), cf. n. 1, *supra*. In *Schware*, the Court noted that a state may require high standards of qualification and proficiency for admission to its bar and that such standards will be judicially upheld as long as they have a rational connection with the applicant's fitness or capacity to practice law. 353 U. S. at 239. In subsequent decisions, this Court has made it plain that the limits of its review in cases such as the instant one are quite narrow and that the allowable range of administrative discretion exercised in connection with the promulgation of rules like that challenged here is correspondingly broad. See *Theard* v. *United States*, 354 U. S. 278, 281 (1957); *Martin* v. *Walton*, 368 U. S. 25 (1961). Consistent with these principles, lower federal and state appellate courts in many instances have upheld rules like that in question. See *Hackin* v. *Lockwood*, 361 F. 2d 499 (9th Cir., 1966); *Application of Schatz*, 80 Wash. 2d 604, 497 P. 2d 153 (1972); *Petition of Bolton*, 83 Nev. 265, 428 P. 2d 195 (1967); *Heninton* v. *State Board of Bar Examiners*, 60 N. M. 393, 291 P. 2d 1108 (1956); *Ralston*

v. *Turner*, 141 Neb. 556, 4 N. W. 2d 302 (1942); *Rosenthal* v. *State Bar Examining Com.*, 116 Conn. 409, 165 Atl. 211 (1933).

Indeed, petitioner does not question the constitutionality of Rule 3 as applied to one entering law school after its promulgation, but urges that its application to him as a graduate of an unapproved school prior to its promulgation unconstitutionally encroaches on vested rights (Petition at 6 et seq.). It is clear from this Court's decisions, however, that such a contention fails to present a question of sufficient substantiality to justify the issuance of the requested extraordinary writ. Even when an individual at a given time has a right to engage in a profession and in fact practices that profession, he is not constitutionally insulated from intervening statutory requirements in the nature of more stringent qualifications affecting his right to continue in such practice. *Dent* v. *West Virginia*, 129 U. S. 114, 122 (1889); *Reetz* v. *Michigan*, 188 U. S. 505, 510 (1903); *Watson* v. *Maryland*, 218 U. S. 173, 176 (1910). Certainly petitioner, who at no time previously practiced after graduating from law school in 1935,[2] is in no more favorable a position. See *Petition of Batten, supra*, in which a rule like that involved here was unsuccessfully challenged by an applicant who graduated from an unapproved law school prior to its promulgation.

Clearly, therefore, the contention that the challenged rule, in order to pass constitutional muster, must contain a grandfather clause in favor of those who graduated from unapproved law schools, many years ago, lacks the substance sufficient to justify the invocation of this Court's certiorari jurisdiction.

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[2] Petitioner admittedly made no attempt to seek admission to the bar of any jurisdiction between 1935 and 1971.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

C. FRANCIS MURPHY,
Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

Attorneys for Respondent,
District Building,
Washington, D. C. 20004
Telephone: 629-3916

LEE T. SELLARS
ELEVEN PARK PLACE
NEW YORK, N.Y. 10007

(212) 349-7778 *Immigration Counsel*

April 12, 1972

Mr. Anthony Nigro
D. C. Court of Appeals
400 F Street, N. W.
Washington, D. C. 20001

Dear Mr. Nigro:

May I please request an application to take the June bar examination?

I took the examination last June and was not successful. Again in January I was unsuccessful.

I simply cannot permit this failure pattern to continue, and I trust I may be permitted to try again this summer.

Very truly yours,

DISTRICT OF COLUMBIA
COURT OF APPEALS

APR 14 1972